

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED  
January 25, 2011

In the Matter of N. D. CROSS, Minor.

No. 298245  
Wayne Circuit Court  
Family Division  
LC No. 08-480062

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Before: WHITBECK, P.J., and ZAHRA and FORT HOOD, JJ.

PER CURIAM.

Respondent mother appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Shortly after the child's birth, the trial court authorized the temporary custody petition, which alleged that respondent lacked housing, had been kicked out of homeless shelters because of anger issues, had a history of mental illness and psychiatric hospitalization, was placed in voluntary foster care after aging out of the system but had failed to comply with offered services, and had attempted to give her 11-day old newborn cranberry juice from a bottle.

To address the concerns raised in the petition, respondent's treatment plan required that she obtain suitable housing, obtain a legal source of income, complete parenting classes, participate in individual counseling, and maintain weekly contact with the caseworker. The court additionally ordered random drug screens after a therapist reported seeing drug paraphernalia at respondent's home. After a positive screen for marijuana and missed screens, petitioner asked that respondent be referred to substance abuse counseling. Petitioner also requested a second set of parenting classes after respondent, who had completed an initial set of parenting classes, placed the one-year old child in the back seat of a car without a car seat.

Evidence at trial showed that respondent had complied with some components of her treatment plan. She regularly visited the child and maintained weekly contact with the caseworker. She also participated in substance abuse therapy and complied with the mental health aspects of her plan. However, respondent did not substantially comply with other critical components of the plan. She was in the process of being evicted from her home because of complaints concerning the people she associated with in the home. She failed to provide written verification of employment. She did not substantially comply with her individual and group counseling requirement. She did not complete the second set of parenting classes ordered by the court. She did not submit drug screens on the dates requested, which, under petitioner's policy, meant that the screens not properly submitted were considered positive screens. There were also

some concerns about respondent's ability to properly feed and care for the child, with the foster mother noting that the child sometimes returned from respondent's care complaining of stomach ache. The foster mother also testified that respondent transported the child in a car that lacked appropriate child safety restraints.

Although respondent's substance abuse therapist did not believe respondent's parental rights should be terminated, both her caseworker and the group therapist testified that they believed that, despite wanting to care for the child, respondent lacked the skills to do so. They pointed out respondent's lack of progress in the nearly two years the child had been in the court's custody. The caseworker also testified that she did not believe that respondent would be able to parent the child even if given an additional three to six months. The psychologist who evaluated respondent also concluded that respondent's long-term prognosis was poor.

The court terminated respondent's parental rights, finding that clear and convincing evidence supported termination under §§ 19b(3)(c)(i), (g), and (j), and that termination was in the child's best interest. In its findings on the record, the court conceded that respondent had addressed the anger management issues that were present when the child was first placed in the court's custody but found that she had otherwise made limited progress, noting that she seemed to respond only when services were brought to her at her home. The court referenced respondent's drug screens but stated that it was not relying on the screens; rather, it was relying on respondent's lack of progress to justify returning the child to her care. The court also produced a written record of its findings.

On appeal, respondent contends that the court improperly considered evidence of her drug screens to support termination of her parental rights. Because the substance abuse issue was not raised as part of the original petition seeking to place the child in the court's temporary custody, respondent correctly argues that the court could not consider any evidence concerning her drug screens unless it was legally admissible. See MCR 3.977(F)(1); *In re D M Kleyla*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (2010). However, respondent did not object to the introduction of this evidence at trial. Accordingly, the issue is unpreserved, and we review for plain error affecting substantial rights. See *In re Hudson*, 483 Mich 928, 931; 763 NW2d 618 (2009).

Respondent correctly asserts that evidence of the drug screens was inadmissible hearsay. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. MRE 801(c); *In re Utrera*, 281 Mich App 1, 18; 761 NW2d 253 (2008). Hearsay is inadmissible unless the rules of evidence provide otherwise. MRE 802; *Utrera*, 281 Mich App at 18. Because evidence concerning respondent's drug screens was not presented by the individual who gathered the evidence and was used to establish respondent's positive screens, the evidence was inadmissible hearsay. See *In re Gilliam*, 241 Mich App 133, 137-138; 613 NW2d 748 (2000). However, the drug screen evidence did not result in a miscarriage of justice in the instant case. Although the court referenced the drug screens in its written "Basis for Terminating Parents' Rights" and in its comments on the record, the court indicated that its decision to terminate was not based on respondent's drug screens. Rather, the court was concerned that respondent had made no real strides, other than addressing some anger management issues, in addressing the issues that had brought the child into the court's care nearly two years earlier. Therefore, although evidence of

the drug screens was inadmissible hearsay, because the court's decision to terminate respondent's parental rights was not dependent on that evidence, the court's consideration of that evidence did not result in a miscarriage of justice justifying reversal on that ground.

The remaining evidence shows that respondent failed in the nearly two years the child was in the court's temporary custody to address many of the concerns that first brought the child into the court's care. She lacked housing and employment; had not consistently participated in therapy, other than substance abuse therapy; and had failed to complete the court-ordered parenting classes. Thus, the trial court did not clearly err in finding termination was appropriate under §§19b(3)(c)(i), (g), and (j). MCR 3.977(H)(3); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

We also agree with the court's finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Although many witnesses agreed that respondent and the child were bonded and that respondent's interactions with the child, for the most part, were appropriate, the court correctly pointed out that most the child's life was spent in foster care. Respondent's caseworker, one of her therapists, and the child's foster mother uniformly testified that the child required permanence and that termination was clearly in the child's best interests. We also agree with the court's assessment that respondent still had difficulty meeting her own needs despite significant assistance and intervention, let alone care for the child's needs. Specifically, respondent has been unable to obtain permanent suitable housing and failed to maintain noted employment. Although the record reflects that respondent wanted to care for the child, the evidence over the course of these protracted proceedings simply did not support the conclusion that respondent would ever be able to do so. Accordingly, this Court affirms the trial court's order terminating respondent's parental rights.

Affirmed.

/s/ William C. Whitbeck  
/s/ Brian K. Zahra  
/s/ Karen M. Fort Hood